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30 IN THE UNITED STATES DISTRICT COURT

31 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

32 BRETT JOHNSON, ) Case No. CV 12-3691 LHK  
33 Plaintiff, )  
34 vs. ) **STIPULATED PROTECTIVE ORDER**  
35 SAN BENITO COUNTY, PATRICK )  
36 TURTURICI, TONY LAMONICA, and )  
37 DOES 1-20, inclusive, )  
38 Defendants. )

1    1. **PURPOSES AND LIMITATIONS**

2       Disclosure and discovery activity in this action are likely to involve production of  
3       confidential, proprietary, or private information for which special protection from public  
4       disclosure and from use for any purpose other than prosecuting this litigation may be  
5       warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
6       following Stipulated Protective Order. The parties acknowledge that this Order does not  
7       confer blanket protections on all disclosures or responses to discovery and that the  
8       protection it affords from public disclosure and use extends only to the limited information  
9       or items that are entitled to confidential treatment under the applicable legal principles.

10      The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated  
11     Protective Order does not entitle them to file confidential information under seal; Civil  
12     Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and  
13     the standards that will be applied when a party seeks permission from the court to file  
14     material under seal.

15    2. **DEFINITIONS**

16       2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
17       information or items under this Order.

18       2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
19       generated, stored or maintained) or tangible things that qualify for protection under  
20       Federal Rule of Civil Procedure 26(c).

21       2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
22       well as their support staff).

23       2.4 Designating Party: a Party or Non-Party that designates information or items that  
24       it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

25       2.5 Disclosure or Discovery Material: all items or information, regardless of the  
26       medium or manner in which it is generated, stored, or maintained (including, among other  
27       things, testimony, transcripts, and tangible things), that are produced or generated in  
28       disclosures or responses to discovery in this matter.

1       2.6 Expert: a person with specialized knowledge or experience in a matter pertinent  
2 to the litigation who has been retained by a Party or its counsel to serve as an expert  
3 witness or as a consultant in this action.

4       2.7 House Counsel: attorneys who are employees of a party to this action. House  
5 Counsel does not include Outside Counsel of Record or any other outside counsel.

6       2.8 Non-Party: any natural person, partnership, corporation, association, or other  
7 legal entity not named as a Party to this action.

8       2.9 Outside Counsel of Record: attorneys who are not employees of a party to this  
9 action but are retained to represent or advise a party to this action and have appeared in  
10 this action on behalf of that party or are affiliated with a law firm which has appeared on  
11 behalf of that party.

12       2.10 Party: any party to this action, including all of its officers, directors, employees,  
13 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

14       2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
15 Material in this action.

16       2.12 Professional Vendors: persons or entities that provide litigation support services  
17 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
18 organizing, storing, or retrieving data in any form or medium) and their employees and  
19 subcontractors.

20       2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
21 "CONFIDENTIAL."

22       2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
23 Producing Party.

24       3. **SCOPE**

25       The protections conferred by this Stipulation and Order cover not only Protected  
26 Material (as defined above), but also (1) any information copied or extracted from  
27 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
28 Material; and (3) any testimony, conversations, or presentations by Parties or their

1 Counsel that might reveal Protected Material. However, the protections conferred by this  
2 Stipulation and Order do not cover the following information: (a) any information that is in  
3 the public domain at the time of disclosure to a Receiving Party or becomes part of the  
4 public domain after its disclosure to a Receiving Party as a result of publication not  
5 involving a violation of this Order, including becoming part of the public record through trial  
6 or otherwise; and (b) any information known to the Receiving Party prior to the disclosure  
7 or obtained by the Receiving Party after the disclosure from a source who obtained the  
8 information lawfully and under no obligation of confidentiality to the Designating Party.  
9 Any use of Protected Material at trial shall be governed by a separate agreement or order.

10 **4. DURATION**

11 Even after final disposition of this litigation, the confidentiality obligations imposed by  
12 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a  
13 court order otherwise directs. Final disposition shall be deemed to be the later of (1)  
14 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final  
15 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,  
16 trials, or reviews of this action, including the time limits for filing any motions or  
17 applications for extension of time pursuant to applicable law.

18 **5. DESIGNATING PROTECTED MATERIAL**

19 **5.1 Exercise of Restraint and Care in Designating Material for Protection:** Each Party  
20 or Non-Party that designates information or items for protection under this Order must take  
21 care to limit any such designation to specific material that qualifies under the appropriate  
22 standards. The Designating Party must designate for protection only those parts of  
23 material, documents, items, or oral or written communications that qualify – so that other  
24 portions of the material, documents, items, or communications for which protection is not  
25 warranted are not swept unjustifiably within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
27 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
28 unnecessarily encumber or retard the case development process or to impose

1 unnecessary expenses and burdens on other parties) expose the Designating Party to  
2 sanctions.

3 If it comes to a Designating Party's attention that information or items that it  
4 designated for protection do not qualify for protection, that Designating Party must  
5 promptly notify all other Parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations: Except as otherwise provided in this Order  
7 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
8 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
9 must be clearly so designated before the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic documents,  
12 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
13 Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected  
14 material. If only a portion or portions of the material on a page qualifies for protection, the  
15 Producing Party also must clearly identify the protected portion(s) (e.g., by making  
16 appropriate markings in the margins).

17 A Party or Non-Party that makes original documents or materials available for  
18 inspection need not designate them for protection until after the inspecting Party has  
19 indicated which material it would like copied and produced. During the inspection and  
20 before the designation, all of the material made available for inspection shall be deemed  
21 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied  
22 and produced, the Producing Party must determine which documents, or portions thereof,  
23 qualify for protection under this Order. Then, before producing the specified documents,  
24 the Producing Party must affix the "CONFIDENTIAL" legend to each page that contains  
25 Protected Material. If only a portion or portions of the material on a page qualifies for  
26 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by  
27 making appropriate markings in the margins).

28

(b) for testimony given in deposition or in other pretrial or trial proceedings,  
that the Designating Party identify on the record, before the close of the deposition,  
hearing, or other proceeding, all protected testimony.

4 (c) for information produced in some form other than documentary and for any  
5 other tangible items, that the Producing Party affix in a prominent place on the exterior of  
6 the container or containers in which the information or item is stored the legend  
7 "CONFIDENTIAL." If only a portion or portions of the information or item warrant  
8 protection, the Producing Party, to the extent practicable, shall identify the protected  
9 portion(s).

10        5.3 Inadvertent Failures to Designate: If timely corrected, an inadvertent failure to  
11 designate qualified information or items does not, standing alone, waive the Designating  
12 Party's right to secure protection under this Order for such material. Upon timely correction  
13 of a designation, the Receiving Party must make reasonable efforts to assure that the  
14 material is treated in accordance with the provisions of this Order.

## 15 | P a g e | 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16        6.1 Timing of Challenges: Any Party or Non-Party may challenge a designation of  
17 confidentiality at any time. Unless a prompt challenge to a Designating Party's  
18 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
19 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party  
20 does not waive its right to challenge a confidentiality designation by electing not to mount  
21 a challenge promptly after the original designation is disclosed.

22        6.2 Meet and Confer: The Challenging Party shall initiate the dispute resolution  
23 process by providing written notice of each designation it is challenging and describing the  
24 basis for each challenge. To avoid ambiguity as to whether a challenge has been made,  
25 the written notice must recite that the challenge to confidentiality is being made in  
26 accordance with this specific paragraph of the Protective Order. The parties shall attempt  
27 to resolve each challenge in good faith and must begin the process by conferring directly  
28 (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days

1 of the date of service of notice. In conferring, the Challenging Party must explain the basis  
2 for its belief that the confidentiality designation was not proper and must give the  
3 Designating Party an opportunity to review the designated material, to reconsider the  
4 circumstances, and, if no change in designation is offered, to explain the basis for the  
5 chosen designation. A Challenging Party may proceed to the next stage of the challenge  
6 process only if it has engaged in this meet and confer process first or establishes that the  
7 Designating Party is unwilling to participate in the meet and confer process in a timely  
8 manner.

9       6.3 Judicial Intervention: If the Parties cannot resolve a challenge without court  
10 intervention, the Designating Party shall file and serve a motion to retain confidentiality  
11 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order  
12 62, if applicable) within 21 days of the initial notice of challenge or within 14 days of the  
13 parties agreeing that the meet and confer process will not resolve their dispute, whichever  
14 is earlier. Each such motion must be accompanied by a competent declaration affirming  
15 that the movant has complied with the meet and confer requirements imposed in the  
16 preceding paragraph. Failure by the Designating Party to make such a motion including  
17 the required declaration within 21 days (or 14 days, if applicable) shall automatically waive  
18 the confidentiality designation for each challenged designation. In addition, the  
19 Challenging Party may file a motion challenging a confidentiality designation at any time if  
20 there is good cause for doing so, including a challenge to the designation of a deposition  
21 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
22 accompanied by a competent declaration affirming that the movant has complied with the  
23 meet and confer requirements imposed by the preceding paragraph.

24       The burden of persuasion in any such challenge proceeding shall be on the  
25 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,  
26 to harass or impose unnecessary expenses and burdens on other parties) may expose the  
27 Challenging Party to sanctions. Unless the Designating Party has waived the  
28 confidentiality designation by failing to file a motion to retain confidentiality as described

1 above, all parties shall continue to afford the material in question the level of protection to  
2 which it is entitled under the Producing Party's designation until the court rules on the  
3 challenge.

4 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

5       7.1 Basic Principles: A Receiving Party may use Protected Material that is disclosed  
6 or produced by another Party or by a Non-Party in connection with this case only for  
7 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may  
8 be disclosed only to the categories of persons and under the conditions described in this  
9 Order. When the litigation has been terminated, a Receiving Party must comply with the  
10 provisions of section 13 below (FINAL DISPOSITION).

11       Protected Material must be stored and maintained by a Receiving Party at a location  
12 and in a secure manner that ensures that access is limited to the persons authorized  
13 under this Order.

14       7.2 Disclosure of "CONFIDENTIAL" Information or Items: Unless otherwise ordered  
15 by the court or permitted in writing by the Designating Party, a Receiving Party may  
16 disclose any information or item designated "CONFIDENTIAL" only to:

17               (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
19 disclose the information for this litigation and who have signed the "Acknowledgment and  
20 Agreement to Be Bound" that is attached hereto as Exhibit A;

21               (b) the officers, directors, and employees (including House Counsel) of the  
22 Receiving Party to whom disclosure is reasonably necessary for this litigation and who  
23 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

24               (c) Experts (as defined in this Order) of the Receiving Party to whom  
25 disclosure is reasonably necessary for this litigation and who have signed the  
26 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

27               (d) the court and its personnel;

28

5 (f) during their depositions, witnesses in the action to whom disclosure is  
6 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be  
7 Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
8 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
9 Protected Material must be separately bound by the court reporter and may not be  
10 disclosed to anyone except as permitted under this Stipulated Protective Order.

11 (g) the author or recipient of a document containing the information or a  
12 custodian or other person who otherwise possessed or knew the information.

13 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
14 **LITIGATION**

15 If a Party is served with a subpoena or a court order issued in other litigation that  
16 compels disclosure of any information or items designated in this action as  
17 "CONFIDENTIAL," that Party must:

24 (c) cooperate with respect to all reasonable procedures sought to be pursued  
25 by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" before a determination by the court from which the subpoena or order

1 issued, unless the Party has obtained the Designating Party's permission. The Designating  
2 Party shall bear the burden and expense of seeking protection in that court of its  
3 confidential material – and nothing in these provisions should be construed as authorizing  
4 or encouraging a Receiving Party in this action to disobey a lawful directive from another  
5 court.

6 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
7 **THIS LITIGATION**

8 (a) The terms of this Order are applicable to information produced by a Non-  
9 Party in this action and designated as "CONFIDENTIAL." Such information produced by  
10 Non-Parties in connection with this litigation is protected by the remedies and relief  
11 provided by this Order. Nothing in these provisions should be construed as prohibiting a  
12 Non-Party from seeking additional protections.

13 (b) In the event that a Party is required, by a valid discovery request, to  
14 produce a Non-Party's confidential information in its possession, and the Party is subject  
15 to an agreement with the Non-Party not to produce the Non-Party's confidential  
16 information, then the Party shall:

17 (1) promptly notify in writing the Requesting Party and the Non-Party  
18 that some or all of the information requested is subject to a  
19 confidentiality agreement with a Non-Party;

20 (2) promptly provide the Non-Party with a copy of the Stipulated  
21 Protective Order in this litigation, the relevant discovery request(s),  
22 and a reasonably specific description of the information requested;  
23 and

24 (3) make the information requested available for inspection by the  
25 Non-Party.

26 (c) If the Non-Party fails to object or seek a protective order from this court  
27 within 14 days of receiving the notice and accompanying information, the Receiving Party  
28 may produce the Non-Party's confidential information responsive to the discovery request.

1 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any  
2 information in its possession or control that is subject to the confidentiality agreement with  
3 the Non-Party before a determination by the court.<sup>(1)</sup> Absent a court order to the contrary,  
4 the Non-Party shall bear the burden and expense of seeking protection in this court of its  
5 Protected Material.

6 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
8 Protected Material to any person or in any circumstance not authorized under this  
9 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the  
10 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
11 unauthorized copies of the Protected Material, (c) inform the person or persons to whom  
12 unauthorized disclosures were made of all the terms of this Order, and (d) request such  
13 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is  
14 attached hereto as Exhibit A.

15 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
16 **MATERIAL**

17 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
18 produced material is subject to a claim of privilege or other protection, the obligations of  
19 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
20 This provision is not intended to modify whatever procedure may be established in an e-  
21 discovery order that provides for production without prior privilege review. Pursuant to  
22 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the  
23 effect of disclosure of a communication or information covered by the attorney-client  
24 privilege or work product protection, the parties may incorporate their agreement in the  
25 stipulated protective order submitted to the court.

26

27

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28 1. The purpose of this provision is to alert the interested parties to the existence of confidentiality  
rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this  
court.

1   12. **MISCELLANEOUS**

2       12.1 Right to Further Relief: Nothing in this Order abridges the right of any person  
3     to seek its modification by the court in the future.

4       12.2 Right to Assert Other Objections: By stipulating to the entry of this Protective  
5     Order no Party waives any right it otherwise would have to object to disclosing or  
6     producing any information or item on any ground not addressed in this Stipulated  
7     Protective Order. Similarly, no Party waives any right to object on any ground to use in  
8     evidence of any of the material covered by this Protective Order.

9       12.3 Filing Protected Material: Without written permission from the Designating  
10   Party or a court order secured after appropriate notice to all interested persons, a Party  
11   may not file in the public record in this action any Protected Material. A Party that seeks to  
12   file under seal any Protected Material must comply with Civil Local Rule 79-5 and General  
13   Order 62. Protected Material may only be filed under seal pursuant to a court order  
14   authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local  
15   Rule 79-5 and General Order 62, a sealing order will issue only upon a request  
16   establishing that the Protected Material at issue is privileged, protectable as a trade secret,  
17   or otherwise entitled to protection under the law. If a Receiving Party's request to file  
18   Protected Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is  
19   denied by the court, then the Receiving Party may file the information in the public record  
20   pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

21   13. **FINAL DISPOSITION**

22       Within 60 days after the final disposition of this action, as defined in paragraph 4,  
23     each Receiving Party must return all Protected Material to the Producing Party or destroy  
24     such material. As used in this subdivision, "all Protected Material" includes all copies,  
25     abstracts, compilations, summaries, and any other format reproducing or capturing any of  
26     the Protected Material. Whether the Protected Material is returned or destroyed, the  
27     Receiving Party must submit a written certification to the Producing Party (and, if not the  
28     same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies

1 (by category, where appropriate) all the Protected Material that was returned or destroyed  
2 and (2)affirms that the Receiving Party has not retained any copies, abstracts,  
3 compilations, summaries or any other format reproducing or capturing any of the Protected  
4 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of  
5 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
6 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
7 consultant and expert work product, even if such materials contain Protected Material. Any  
8 such archival copies that contain or constitute Protected Material remain subject to this  
9 Protective Order as set forth in Section 4 (DURATION).

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 Dated: March 20, 2013

SCOTT LAW FIRM

12 By: /s/ LIZABETH N. DE VRIES  
13 LIZABETH N. DE VRIES  
Attorney for Plaintiff

15 Dated: March 20, 2013

RANKIN, LANDSNESS, LAHDE,  
SERVERIAN & STOCK

16 By: /s/ Michael C. Serverian  
17 MICHAEL C. SERVERIAN  
18 Attorney for Defendants

20 Dated: March 20, 2013

DAVIS & YOUNG, APLC

21 By: /s/ Mark Davis  
22 MARK DAVIS  
23 Attorney for Defendant  
PATRICK TURTURICI

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26 DATED: March 22, 2013

  
HONORABLE LUCY H. KOH  
Judge of the U.S. District Court

1 EXHIBIT A

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 [print or type full address], declare under penalty of perjury that I have read in its entirety  
5 and understand the Stipulated Protective Order that was issued by the United States  
6 District Court for the Northern District of California on \_\_\_\_\_ in the case of BRETT  
7 JOHNSON v SAN BENITO COUNTY, PATRICK TURTURICI, TONY LAMONICA, et al.,  
8 Case No. CV 12-3691 LHK. I agree to comply with and to be bound by all the terms of this  
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply  
10 could expose me to sanctions and punishment in the nature of contempt. I solemnly  
11 promise that I will not disclose in any manner any information or item that is subject to this  
12 Stipulated Protective Order to any person or entity except in strict compliance with the  
13 provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Northern District of California for the purpose of enforcing the terms of this Stipulated  
16 Protective Order, even if such enforcement proceedings occur after termination of this  
17 action.

18 I hereby appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and telephone number] as my California  
20 agent for service of process in connection with this action or any proceedings related to  
21 enforcement of this Stipulated Protective Order.

22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24 Signature: \_\_\_\_\_

25 Printed name: \_\_\_\_\_

26

27

28